THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ACCU-SPEC ELECTRONIC SERVICES, INC.	:	
	:	
Plaintiff,	:	
	:	**C.A. NO.: 03-394 E**
v.	:	
	:	
CENTRAL TRANSPORT INTERNATIONAL, INC. and LOGISTICS PLUS, INC.	:	
	:	**ELECTRONICALLY FILED**
Defendants.	:	

CENTRAL TRANSPORT INTERNATIONAL, INC.'S MOTION IN LIMINE TO PRECLUDE EVIDENCE OF SPECIAL OR CONSEQUENTIAL DAMAGES THAT WERE NOT FORESEEABLE

I. INTRODUCTION

Plaintiff Accu-Spec Electronic Services, Inc. ("Accu-Spec") has brought this lawsuit against Central Transport International, Inc. ("Central Transport") seeking to recover monetary damages for alleged damage to freight while in interstate transportation between California and Pennsylvania. Should Plaintiff prove that the freight was damaged in transit, Plaintiff may be entitled to recover certain reasonable and foreseeable damages; however, Plaintiff may not recover unforeseeable damages as a matter of well settled law. Specifically, Plaintiff intends to introduce evidence of special damages, including costs to pack and send the damaged unit to England and expenses to fly an engineer from England to inspect the unit. Because there is no evidence whatsoever that these special damages were foreseeable, Central Transport moves to preclude the introduction of any evidence regarding such special damages.

II. FACTUAL BACKGROUND

In January of 2003, Accu-Spec engaged Logistics Plus, a freight forwarder, to transport a crate containing an X-ray machine from Fremont, California to Accu-Spec's facility in McKean, Pennsylvania. Logistics Plus issued a rate to Accu-Spec for transportation of the freight. Logistics Plus then issued its own bill of lading which governed the terms of the shipment from origin to its destination. Logistics Plus in turn entered into a separate contract with Central Transport to physically pick up and deliver the freight. Central Transport had worked many times before with Logistics Plus on freight movements. Central Transport had absolutely no contact with Accu-Spec whatsoever in arranging to transport the freight. All communications by Accu-Spec to make arrangements for transportation of the freight were made solely with representatives of Logistics Plus. Subsequent to delivery of the crate containing the X-ray machine, Accu-Spec notified Logistics Plus of damage to the freight

Accu-Spec chose to have a representative of Dage, the manufacturer of the X-ray machine, travel from England to Pennsylvania to inspect the machine to determine what could be done to fix the machine. See Accu-Spec's Pre-Trial Narrative Statement at p. 4 (claiming damages for Peter Dunn's engineering services in the amount of $2,263.72- invoices attached hereto as Exhibit "A"). Thereafter, Accu-Spec arranged for the transport of the X-ray machine to Dage's England location for repairs. See Id. (claiming damages for packaging expenses incurred in preparing the machine for shipment to England in the amount of $1025.00, freight charges incurred in sending the machine to England in the amount of $2,390.52 and charges for returning machine to the United States in the amount of $3924.55, for a total of $7340.07 in claimed damages- invoices attached hereto as Exhibit "B"). Prior to this, Central Transport was never notified by anyone what the freight was, other than its weight class. Central Transport did not know nor did it have reason to know that the machine was manufactured in England or that any potential repairs would have to take place there.

Plaintiff filed this suit seeking to recover, *inter alia*, damages for the expenses incurred for Dage's representative from England to travel and inspect the X-ray machine and subsequently, expenses incurred as a result of packing and shipping the machine to England to be repaired. For the reasons discussed below, Central Transport submits that none of these damage claims are recoverable, and evidence in connection with these damage claims must be precluded as a matter of well settled law.

III. ARGUMENT

A. Evidence of alleged special or consequential damages is inadmissible as those damages were not foreseeable

Accu-Spec has indicated that it intends to seek damages for the expenses incurred in flying a representative of the X-ray machine's manufacturer from England to inspect the machine and expenses incurred in packing and shipping the machine to England for repair. Central Transport submits that such evidence is irrelevant as to any claim against it, and therefore inadmissible, because Plaintiff cannot establish its entitlement to recover such special or consequential damages from Central.

It is a matter of well-settled law that damages must be foreseeable in order to be recovered. See Restatement 2nd of Contracts § 351 ("[d]amages are not recoverable for loss that the party in breach did not have reason to foresee as a probable result of the breach when the contract was made."). Damages for losses that occur outside of the ordinary course of events are called "special" or "consequential" damages and are generally not recoverable as a matter of law. Id. The Carmack Amendment provides, in pertinent part, that a carrier is liable in damages to the shipper for the actual loss or injury to property. 49 U.S.C. § 11707(a)(1). Regardless of whether a claim arises from an actual loss of property, damage to the property, or merely a delay in delivery, "[t]he Carmack Amendment has not altered the common law rule that special, or consequential, damages are not usually recoverable in an action for breach of contract." Contempo Metal Furniture Co. v. East Texas Motor Freight Lines, Inc., 661 F.2d 761, 765 (9th Cir 1981); See also The Paper Magic Group v. J.B. Hunt Transport, Inc., 318 F.3d 458 (3d Cir 2003). Special or consequential damages are recoverable under the Carmack Amendment only "if the carrier had notice of the special circumstances from which such damages would flow at the time the bill of lading contract was made" Main Road Bakery, Inc. v. Consolidated Freightways, Inc., 799 F.Supp. 26, 28 (D.N.J 1992) (collecting cases including Contempo Metal Furniture)

Here, Plaintiff has not and cannot demonstrate that it gave Central Transport notice at the time of the formation of the bill of lading contract that the X-ray machine in question was so specialized that if it was damaged during shipment, it would require inspection by someone from England, and that repairs would have to take place in England. There is no way that Central Transport could have reasonably known of any such consequences. The only information Central Transport had with regard to the X-ray machine was on the bill of lading, which reflected only that a crate was being shipped from California to Pennsylvania The purpose of the notice rule "is to enable the carrier to protect itself from special damages by negotiating special contractual terms, declining the shipment, or taking special precautions to avoid the loss." Contempo Metal Furniture, supra at 765. By failing to give notice that the crate contained an X-ray machine so complex that it had to be inspected by someone from overseas and that the repairs needed to take place in England, Plaintiff deprived Central Transport of the opportunity to protect itself from the claim Plaintiff now asserts.

As Plaintiff is unable to establish a viable claim for special or consequential damages, the damage claims are not recoverable, and evidence of these damages, while prejudicial, is not relevant Therefore, this Honorable Court must as a matter of law grant Central Transport's motion and enter an order precluding Plaintiff from presenting any evidence of special damages.

IV. CONCLUSION

In light of all of the foregoing reasons, evidence of alleged special or consequential damages is not admissible. Consequently, this Honorable Court should grant Defendants' motion, and enter an order precluding the presentation of any such evidence.

Respectfully submitted,

JANSSEN & KEENAN P.C.

By: /s/ Jeffrey D. Cohen

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Central Transport International, Inc.

Dated: October 4, 2005

CERTIFICATE OF SERVICE

This is to certify that on this, the 4th day of October 2005, a copy of the foregoing Central Transport International, Inc.'s Motion In Limine to Preclude Evidence of Special or Consequential Damages That Were Not Foreseeable was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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I hereby certify that on this, the 4th day of October 2005, a copy of the foregoing Central Transport International, Inc.'s Motion In Limine to Preclude Evidence of Special or Consequential Damages That Were Not Foreseeable was served via U.S. first class mail delivery, upon the following:

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